

Terms and Conditions

1. Definitions

In these Terms and Conditions:

Business Day means any day except a Saturday, a Sunday or any other public holiday in Adelaide, South Australia;

Client means each person who purchases Services from V2E or any related entity of V2E;

Client Services means the Services set out in the Quote;

Confidential Information means proprietary information and documents provided by and about V2E that are confidential in nature;

Created IP means all Intellectual Property Rights created:

- (a) through the provision of the Client Services; and
- (b) pursuant to the Quote and these Terms and Conditions;

Disbursements means the out of pocket expenses by V2E which have been paid on the Client's behalf in delivering the Services in accordance with the Quote;

Fees means the amount payable by the Client for delivery of the Services in accordance with the Quote, exclusive of GST and Disbursements;

GST has the meaning given in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, patents, inventions, copyright, design rights, branding, know-how, trade marks, software, code, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration;

Pre-existing IP means all Intellectual Property Rights owned by the V2E that:

- (a) V2E owns prior to the date that Client accepts a Quote; and
- (b) are improvements to the Intellectual Property Rights owned by V2E that are created at any time and independent of the Client Services;

Quote means the quote for Services requested by the Client, provided by V2E and accepted by the Client which includes particulars of the Services and delivery of the Services, including a description of the Services to be provided by V2E, the Fees and the estimated timeframe for delivery of the Services to be delivered to the Client in accordance with the Quote;

RBA Cash Rate means the cash rate target for unsecured overnight loans between banks published by the Reserve Bank of Australia;

Services means the services provided by V2E from time to time, including preliminary build estimates, full build estimates and structural designs and estimates;

Terms and Conditions means the terms and conditions set out in this document;

V2E means Vision 2 Estimating Pty Ltd (ACN 640 420 604); and

V2E Group means V2E and its related bodies corporate and the officers, employees, agents, contractors and subcontractors of any of them.

2. Application of Terms and Conditions

- 2.1 Unless otherwise agreed in writing by V2E by way of duly executed agreement, these Terms and Conditions apply exclusively to every contract for the purchase of Services from V2E and cannot be varied or replaced by any other terms unless V2E expressly agrees in writing to vary or replace these Terms and Conditions.

- 2.2 These Terms and Conditions take precedence over any terms set out in a Quote to the extent of any inconsistency.
- 2.3 Any Quote provide by V2E is not an offer to sell or provide Servies but an invitation from V2E for the Client to offer to purchase the Client Services from V2E.
- 2.4 The Client will be deemed to have accepted and be bound by these Terms and Conditions by ordering or accepting any Services from V2E.
- 2.5 In these Terms and Conditions and the Quote headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:
- (a) a reference to a word includes the singular and the plural of the word and vice versa and a reference to a gender includes the other gender;
 - (b) no provision of these Terms and Conditions will be construed adversely to a party solely on the ground that the party was responsible for its preparation;
 - (c) an agreement or obligation on the part of two or more persons binds them jointly and severally;
 - (d) a monetary reference is a reference to Australian currency;
 - (e) the term 'including', 'e.g.', 'such as', 'particularly' or any similar expression is not used as, nor is intended to be interpreted as, a term of limitation;
 - (f) a reference to supply in relation to Client Services includes a reference to the sale or provision of the Client Services;
 - (g) a word or term defined in the *Corporations Act 2001*

(Cth) has the same meaning; and

- (h) a word or term defined in A *New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning where used in connection with the GST imposed under that Act.

3. Quote and Order

- 3.1 The Client has requested V2E to provide, and V2E agrees to provide, the Client Services pursuant to the terms set out in:
- (a) these Terms and Conditions; and
 - (b) the Quote.
- 3.2 In consideration for the performance of the Client Services by V2E, the Client agrees to pay V2E the Fees, Disbursements and all required taxes (including GST) in accordance with clause 4.
- 3.3 V2E will not be bound by any Quote until it is accepted by V2E in writing or the Client Services are provided at V2E's absolute discretion.
- 3.4 If the Client confirms that it would like to purchase the Client Services from V2E, a contract is made on the date that V2E confirms to the Client that V2E is willing to provide the Client Services.
- 3.5 V2E may withdraw any Quote in whole or in part in its sole discretion at any time prior to V2E confirming to the Client that V2E is willing to provide the Client Services.

4. Fees

- 4.1 Unless otherwise specified, the Fees are exclusive of all:
- (a) taxes and duties (including GST); and
 - (b) Disbursements,
- and the Client must pay to V2E the sum of the Fees, taxes and duties (including GST), and

- Disbursements in consideration of V2E's delivery of the Client Services.
- 4.2 V2E may issue:
- (a) one invoice to the Client for the Fees after delivery of the Client Services; or
 - (b) any number of invoices progressively while the Client Services are being delivered.
- 4.3 An invoice issued by V2E must be paid by the Client in full and in cleared funds within 14 days after the date of the relevant invoice.
- 4.4 If any amount due for payment under these Terms and Conditions is not paid on the due date in accordance with clause 4.3, V2E can charge the Client interest at a rate not exceeding the RBA Cash Rate plus 2% for the period commencing on the date that the invoice was issued until the invoiced amount plus any interest charged is paid in full.
- 4.5 Payment terms may be revoked or amended at V2E's discretion immediately by giving written notice to the Client.
- 4.6 The time of payment by the Client is of the essence.
- 4.7 Liability for accounts held in more than one name is joint and several.
- 4.8 All amounts payable by the Client under these Terms and Conditions must be paid in full without any set-off, counterclaim, deduction or withholding.
- 4.9 If a payment by a party under or in connection with these Terms and Conditions is consideration for a taxable supply, the Client must pay an amount on account of GST in respect of that payment:
- (a) as an additional amount in accordance with the GST Act; and
 - (b) at the same time, and in the same manner, as the payment payable.
- 4.10 If a payment due under these Terms and Conditions is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, then that party will exclude any GST forming part of the amount to be reimbursed or indemnified to the extent to which that other party can claim an input tax credit.
- 5. Timing of the provision of Client Services**
- The Quote may include a timeframe for provision of the Client Services or stipulate that the Client Services will be delivered in stages. To the maximum extent permitted by law, V2E makes no warranty as to time of provision of the Client Services and the Client acknowledges that V2E will not be held liable for any loss or damage (including consequential loss or damage) arising from delay in provision of the Client Services. V2E may deliver Client Services in part or in stages with written notice to the Client.
- 6. Shortage Event**
- 6.1 A shortage event occurs in circumstances where V2E has been engaged by a Client to provide Client Services in accordance with the Quote and these Terms and Conditions, which may include the following components:
- (a) the expected time for the Client or its contractor or agent to source materials, supplies, goods or services (**Estimated Time Frame**);
 - (b) the expected availability for the Client or its contractor or agent to source materials, supplies, goods or services (**Estimated Availability**);
 - (c) the estimated material count in the bill of quantities or the bill of materials prepared in

relation to the provision of the Client Services provided by V2E (**Estimated Count**); or

- (d) the estimated size or design of the structural member that forms part of the product delivered to the Client by V2E (**Structural Estimate**),

to be used by the Client and/or the Client's builder in connection with a building project or contract, and the Client, or the Client's related bodies corporate and/or any builder engaged by the Client or its related bodies corporate are unable to acquire or source any materials, supplies, goods or services within the Estimated Time Frame, Estimated Availability, Estimated Count or Structural Estimate for any reason whatsoever which is outside of the control of V2E, including as a result of supply chain events (including unexpected substantial price fluctuations or availability changes), natural disasters, governmental or societal actions or economic or political unrest and as a consequence the Estimated Time Frame, Estimated Availability, Estimated Count or Structural Estimate is no longer accurate.

- 6.2 To the maximum extent permitted by law, V2E is not responsible for any loss or cost suffered by the Client as a result of:
 - (a) the Estimated Count and the Client confirms that it is the responsibility of its builder to check and verify the Estimated Count; and
 - (b) the Structural Estimate and the Client acknowledges and confirms that all structural designs provided by V2E are subject to verification and confirmation by a certifier and/or engineer engaged by the Client prior to construction.

- 6.3 If the Client relies on the Estimated Time Frame, Estimated Availability, Estimated Count, Structural Estimate or any other part of the Client Services, to the maximum extent permitted by law the Client releases V2E from any claim, liability, damage, loss or cost suffered or incurred by the Client caused by or relating to that reliance.

7. Intellectual Property

- 7.1 Title and ownership of the Pre-existing IP, including copies of the Pre-existing IP, and all Intellectual Property Rights in the Pre-existing IP, will remain with V2E. No title or ownership of the Pre-existing IP or any part or modification is transferred to the Client.
- 7.2 The Client agrees that it has no right to, and will not, mortgage or charge the Pre-existing IP or the licence granted under these Terms and Conditions or use the same as surety or collateral.
- 7.3 Nothing in these Terms and Conditions affects the ownership of moral rights in the Pre-existing IP.
- 7.4 Title and ownership of the Created IP will vest in and remain with V2E.
- 7.5 The Client agrees that it has no right to, and will not sell, assign, mortgage or charge the Created IP or use the same as surety or collateral and will not seek to sell, assign, mortgage or charge the Created IP or use the same as surety or collateral.
- 7.6 Subject to and conditional on payment of all Fees payable by the Client, V2E grants to the Client an exclusive, royalty-free, non-transferable licence to use the Created IP for the purposes for which it was created by V2E.

8. Confidentiality

The Client must keep confidential and not disclose or make known to anyone any Confidential Information and the

Client agrees to procure each of its personnel to do so.

9. Privacy disclosure and consent

The Client authorises V2E to:

- 9.1 obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Client;
- 9.2 use, disclose or exchange with other credit providers about the Client's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
- 9.3 disclose the contents of any credit report on the Client to any of V2E's solicitors and mercantile agents.

10. Subcontractors

V2E may use subcontractors to prepare and supply any portion of the Client Services.

11. Default

- 11.1 If the Client breaches any of these Terms and Conditions, is insolvent, bankrupt, commences winding up, is placed under official management, into liquidation or has a receiver appointed in respect of any of its assets or is subject to a similar event (or V2E has reasonable grounds to form the opinion that the Client is experiencing such an event), or if the ownership or effective control of the Client or the Client's business has changed without the prior written consent of V2E, then V2E may immediately terminate any contract for the provision of Client Services that have not been provided, delivered or collected.
- 11.2 All costs incurred by V2E relating to any action taken by V2E to

recover any money due from the Client (including without limitation, legal or debt collection costs) will be payable by the Client on demand as an additional amount owed.

12. Warranties and Indemnities

- 12.1 To the maximum extent permitted by law:
 - (a) all warranties and conditions, whether express or implied by statute, common law or otherwise, are excluded;
 - (b) V2E provides no warranties or guarantees whether express or implied in connection with the Services, and all warranties, descriptions, representations or conditions (whether relating to fitness, merchantability, or otherwise, and all specific conditions, even though such conditions may be known to V2E) are expressly excluded; and
 - (c) the Client releases V2E from any claim, liability, damage, loss or cost suffered or incurred by the Client or its personnel in relation to the provision and/or delivery of the Services.
- 12.2 The Client indemnifies V2E from and against all liabilities, claims, losses, damages, costs suffered or incurred by V2E arising (directly or indirectly), including any debt recovery and legal costs from the Client's acts or omissions, except to the extent that such claim, loss or damage arises solely and directly from the gross negligence or wilful misconduct of V2E or its personnel.
- 12.3 The Client warrants that:
 - (a) the information provided to V2E in relation to the Client Services, including information provided to

V2E in solicitation of the Quote, is true and correct;

- (b) it is authorised, and has legal power and capacity, to enter into and perform any contract created by V2E confirming to the Client that V2E is willing to provide the Client Services; and
- (c) any contract created by V2E confirming to the Client that V2E is willing to provide the Client Services constitutes legal and binding obligations that are enforceable against it in accordance with these Terms and Conditions.

13. General

- 13.1 Each party must, at its own expense, do everything reasonably necessary to give effect to these Terms and Conditions and the transactions contemplated by it, including without limitation the execution of documents.
- 13.2 The rights and remedies provided in these Terms and Conditions are cumulative with and not exclusive of the rights and remedies provided by law independently of these Terms and Conditions.
- 13.3 These Terms and Conditions are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these Terms and Conditions. The Client may only assign its rights under any contract created in accordance with a Quote after it obtains the written consent of V2E.
- 13.4 If any provision of these Terms and Conditions is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of these Terms and Conditions nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.
- 13.5 The terms of any contract created by a Quote are entirely comprised of the terms of these Terms and Conditions and any terms set out in the Quote and accepted by V2E, and such terms constitute the entire agreement of the parties in respect of the subject matter of such contract and supersede, replace and override all other discussions, undertakings, terms and agreements.
- 13.6 Nothing in these Terms and Conditions, or any terms contained in any Quote, constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably except as expressly stated in these Terms and Conditions.
- 13.7 A party may send a notice in connection with these Terms and Conditions by hand delivery, pre-paid post or email to another party at its address details set out in the Quote or in such other way as the recipient party may have last notified each other party in writing. A notice is deemed to be received:
 - (a) if sent by hand delivery, at the time of delivery if on a Business Day at or before 5:30 pm, otherwise on the next Business Day;
 - (b) if sent by pre-paid post within the same country, on the second Business Day after the date of posting; or
 - (c) if sent by email, on the day it was sent.